the child if such access is not too frequent.

The object of allowing access to the father is to see that the child grows up knowing and loving him and not to allow him to share in the custody, care and control which must necessarily remain with the mother. The father in his wisdom has thought fit to foster in the child's mind the fiction that things are as they used to be except that he now lives in Singapore. That fiction can be maintained only if his visits to the child are allowed at reasonable intervals. In all the circumstances of the case and with a view to avoiding any emotional conflict of loyalties and affection in the mind of the child, I would make an order that the father do have access to the child once a month on the second Sunday of each month between the hours of 9 a.m. and 1 p.m., and that the original order be varied accordingly. In order to avoid the sort of trouble in the past which has led to these proceedings the access will have to be under circumstances which preclude any contact between the petitioner and the respondent.

Before concluding the matter I would like to point out that, as was stated by Willmer L.J. in *S.* v. *S. and P.*,[6] no order relating to custody, care and control, or access to children is ever permanent; it is always subject to review, and the order I am making is no exception. It may well be that the result of this order giving access will turn out to be successful; if so, it may be that at some time hereafter the father will be disposed to ask for more liberal terms of access. On the other hand, the access granted may turn out to be unsuccessful, in which case possibly the petitioner will come back again and once more request that access be denied to the father.

I would reserve the question of costs to be argued on a later date.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Skrine & Co.*

NG KAY THONG v. CHAN SHON-SHONG

[F.C. (Barakbah L.P., Ong Hock Thye F.J. and Ismail Khan J.) July 12, 1966]

[K.L. — F.M. Civil Appeal No. 8 of 1966]

Damages — Loss of left arm — Fair compensation.

Precedent — Federal Court — Whether bound to follow its own previous decision.

This was an appeal against the decision of Abdul Aziz J. who had awarded $22,500 general damages and $602.70 for special damages in a running-down action ([1966] 1 M.L.J. 234). The appeal was against quantum. The appellant was 42 years old and as a result of the accident lost all but five inches of his left arm. He was hospitalized for 50 days and an artificial arm had been fitted for him. It was argued that damages were too low and out of line with the trend of comparable cases.

Held: the learned trial judge in this case had considered all relevant factors in his assessment of the damages and the appeal should be dismissed.

Cases referred to:—

(1) *I. R. K. Tandon* v. *Ng Siok Kwee & Anor.* [1964] M.L.J. xlv, affirmed by F.C. Civil Appeal No. 75 of 1963, September 1, 1964.

(2) *Chia Boon Keng* v. *Sri Jaya Transport Co.* [1965] 2 M.L.J. 239.

(3) *Chia Boon Keng* v. *Sri Jaya Transport Co.* [1965] 1 M.L.J. xii.

(4) *Jag Singh* v. *Toong Fong Omnibus Co.* [1964] M.L.J. 463.

(5) *Warren* v. *King* [1964] 1 W.L.R. 1.

FEDERAL COURT.

H. E. Cashin for the appellants.

N. A. Marjoribanks for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: This is an appeal against the decision of Abdul Aziz J. in a running-down case, awarding to the appellant $22,500 general damages and $602.70 for special damages. The appeal is as to quantum only, on the grounds that the award of general damages was inordinately low and that it did not follow the trend of awards for similar injuries.

It is to be observed that the claim for loss of past earnings and potential future earnings was abandoned at the trial, thus narrowing the field of the award considerably.

The appellant was 42 years old at the time he lost by amputation all but 5 inches of his left arm. He was hospitalised for 50 days, during which he underwent two operations, the first on admission and the second 38 days later, as the result of gangrenous infection. An artificial arm was fitted at St. Mary's Hospital, London, but the appellant said "it was seldom used". He did not volunteer, and was not asked in cross-examination, the reason for his disdaining to use it. He went on to state that he had what the orthopaedist described as phantom limb feeling which, however, was not painful, though uncomfortable. At any rate, he had adapted himself. He was naturally right-handed.

Mr. Cashin, with his usual persuasiveness, dilated on the value of an arm, the loss of which, on the average, rates about 10 per cent higher than the leg. It is to be noted, however, that he had, in his final submission before Abdul Aziz J., expressed the view that $26,500 should be the proper award, following the trend in *Tandon's* case.[1] There, a clerk, whose age was nowhere revealed on the record, and whose salary was the same after the accident as before it, was awarded by Gill J. $26,500 general damages, taking into account his disability affecting his prospects of future promotion, on which point Tan Ah Tah

F.J observed: "This loss of his forearm must affect adversely the plaintiff's earning capacity and this factor was, in my view, correctly taken into account by the learned trial judge." Mr. Cashin also referred to a more recent judgment of the Federal Court, *Chin Boon Keng* v. *Sri Jaya Transport Co. (P.T.M.) Ltd.*,[2] where an award or $7,500 by Abdul Aziz J. in the High Court [3] to a 13-year-old school-boy for the loss of the leg by amputation above the knee, was raised to $17,500 on the basis of 50 per cent liability for contributory negligence.

I do not think it serves any useful purpose here to discuss whether and to what extent this court is bound by its previous decision on the matter of quantum of damages, and whether the decision referred to accords with that of the Privy Council in *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*[4] which it purported to follow. Suffice it to say that the present appeal in my view concerns a case where the circumstances of the appellant are quite individualistic and exceptional. There was no loss of future earnings by reason of the incapacity: the artificial limb was not even shown to have been less than useful for all the calls that could be made on it. The appellant is not a housewife who often finds two good hands indispensable simultaneously. In fact it was admitted that the appellant had since adapted himself. Permanent embarrassment, yes, besides a certain degree of handicap in the normal enjoyment of life. But beyond that I do not think that, over and above fair compensation, there should be any element of generosity for its own sake. As was stated in *Warren* v. *King*.[5] "awards must be reasonable and assessed with moderation", what is fair "should meet the plaintiff's requirements" and fair compensation should be "fair as between the the negligent person and his victim. Not punishment of him, but what he ought in fairness to pay."

In my view, all relevant factors that ought to have been considered by the learned trial judge in his assessment of damages had been taken into account. He had not been heedless of any trend as such that I can see.

I would dismiss the appeal with costs.

Ismail Khan J.: I have had the benefit of reading the judgment of Ong F.J. with which I find myself in entire agreement.

For myself I find some difficulty in reconciling the award of $35,000 general damages in *Chin Boon Keng* v. *Sri Jaya Transport Co. (P.T.M.) Ltd. & Anor.*[1] with the award of $25,000 made by the Privy Council in *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*[2]. In the former case, the boy was thirteen years old, in the latter, seven. Jag Singh's right leg was amputated at a point below the hip joint. Chin Boon Keng's left leg was amputated below the knee. It will be seen from the report that the opinion of the Privy Council was arrived at after a careful consideration of the great number of cases cited by Mr. Murphy. Hence, I am at a loss to understand, in the absence of any reasons or explanation, the discrepancy of as much as $10,000 between the two awards, the larger sum being given for a case where the amputation was less severe. I cannot say that because the major issue before the Federal Court was still the question of negligence or no negligence, the increase in the award to Chin Boon Keng was possibly made *per incuriam* since the Privy Council judgment was referred to in that case. However, Ong F.J. felt himself not bound to follow the earlier decision of the Federal Court for the reasons he has given, and, with respect, I am of the same opinion.

Barakbah L.P. concurred.

I also would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*